Appeal No. 45 *of* 1904-05.

Appellants	*Respondent*
	Versus
1. Lingegowda, son of Gude Lingegowda of Chikmalur village. 2. Aji Singalachar of Dodmalur village, Channapatna Taluk.	Mr. Setlur, Advocate, Bombay High Court and Agent of the Inamdar of Kudlur village, Channapatna Taluk.

Subject.

Appeal against the order of the Deputy Commissioner of the Bangalore District, declining to permit the appellants to continue to cultivate certain lands of Chikmalur village in the Channapatna Taluk, on the ground that the said lands had been treated as kharab at the time of the Survey Settlement and included into the tank bed of the adjoining Inam village of Kudlur in the said taluk.

The facts of the case appear sufficiently from the following :—

Decision.

This is a very simple case. The appellants owned certain lands in the Sirkar village of Chikmalur. At the Survey Settlement these and certain other lands were found to be within the level line of the tank of the neighbouring Inam village of Kudlur. They were thereupon classed as kharab and included in the tank bed. The appellants nevertheless continued to cultivate their lands. For so doing they were found fault with and fined. This was in 1894-95. They have since been persistently complaining against this treatment. There was a difference of opinion as to whether the lands were really within the water spread of the tank. Several inspections were made and in the result both the Revenue and Public Works officers were of opinion that though not altogether outside the water line there was nothing to prevent the lands being permitted to be cultivated as usual when no water was standing thereon. The Deputy Commissioner did not however see his way to grant the appellants any relief. Hence this appeal.

2. There can be no doubt that the lands in question are situate in a Sirkar village, and that the appellants held the same for several decades before the Survey Settlement. That being so the summary eviction of the appellants is a proceeding for which there can be no justification. Nor can they be interdicted from enjoying the lands in such manner as they might find possible so long as the right of occupancy remains unacquired from them either by private negotiation or in accordance with law.

3. Under these circumstances Government direct that the lands be allowed to remain in the appellants' undisturbed possession to be enjoyed by them as best they can and on payment of such assessment as may be fixed by the Survey Department, until duly acquired from them for inclusion in the tank bed.

No. R. 10059-59 *A.—R. M.* 486-03-10, *dated Bangalore,* 25*th January* 1906.

Copies of the above are forwarded to the (1) Deputy Commissioner of the Bangalore District, together with the records received with his letter No. 191, dated the 8th September 1904, and (2) to the Survey and Settlement Commissioner in Mysore, together with the village maps of Kudlur and Chikmalur villages received with his letter No. 83, dated the 12th December 1905.

Appeal No. 43 *of* 1905-06.

Appellant	*Versus*	*Respondent*
Komaraiya		Nagappa.

Subject.

Appeal against the order of the Deputy Commissioner of the Hassan District, dismissing the appellant's suit filed to establish his claim to the registry of the shanbhogi baraward in his name, of either of the two circles of Jakkanahalli and Agile in the Hassan Taluk.

The facts of the case appear sufficiently from the following :—

Decision.

The plaintiff (appellant) and the father of the defendant (respondent) were brothers, being the sons of one Subraya who was the registered shanbhog of Agile and certain villages until his death which took place in the year 1847. The defendant's father being the eldest son of the deceased was appointed as his successor in 1848. In consequence however of his incapacity, the office was as a matter of fact held by the appellant until the former's death which

occured in 1872. Even subsequently the appellant continued to be in possession both at the Potigi Settlement of 1882 and for twelve years afterwards. During all this time the register nominally stood in the name of the defendant's father. At the settlement above referred to, the villages in question were formed into two circles called Agile and Jakkanahalli. The appellant was doing the duties of both until 1894, when it was decided that he should hold only one namely Jakkanahalli, and surrender the other (Agile) to the respondent. The register of both was nevertheless made out in the name of the respondent alone, and the appellant was referred to a regular suit. The present suit has accordingly been instituted. It must be noted that the appellant has another or younger brother by name Seshagiraiya. Both the Assistant Commissioner, and the Deputy Commissioner have dismissed the suit on the ground that Seshagiraiya is as much entitled to a share as the appellant and that the villages cannot be re-distributed so as to form three circles in place of the two constituted at the Potigi Settlement. The Deputy Commissioner differring from the Assistant Commissioner has further held that the suit is governed by the six years rule and is consequently barred by limitation. Hence this appeal.

2. The respondent's contention was that the shanbhogi in dispute was his father's self acquisition, having been reacquired by him in 1848, that is, some years after the previous officiator's dismissal in 1826. This he failed to substantiate and the authorities below have correctly found with reference to the documentary evidence on record that the shanbhogi is an ancestral and hereditary office. As already observed, the appellant was in possession of all the villages from 1872 to 1894 and he continues to this day in the enjoyment of such of them as are included in one of the two circles which for administrative convenience were constituted at the settlement of 1882. His case is then clearly distinguishable from that of the third brother Seshagiraiya whose possible claims should not have been imported into this suit and relied upon as an argument against the admissibility of the appellant's claim. Of the three brothers, the eldest was the nominal barawarddar, the second was for several decades the real officiator and the third has apparently never had anything to do either with the office or with the duties appertaining to it. That being so, there is nothing to prevent one of the two circles being adjudged by name as well as in reality to the appellant and the other being allowed to remain in the name and possession of the respondent. No question of division or re-distribution really arises in this case.

3. Having allotted one of the circles to the appellant and the other to the respondent the register should have as a matter of course followed that arrangement instead of the appellant being relegated to a regular suit in 1894. That was a needless technicality and does not prejudicially affect the claims of the appellant who continues to be in the enjoyment of the circle (Jakkanahalli) then assigned to him. All that the appellant wants is an official recognition of his status as the shanbhog of the said circle. Both the circles cannot be held by a single individual. Hence the disposal of one of them in favor of the respondent and of the other in that of the appellant. To enable the registry being made out accordingly there was really no need for a formal suit; such being the view that Government entertain of the case, it is clear that the refusal of the appellant's prayer on the ground of limitation cannot be supported.

4. Neither the existence of a third brother nor the question of limitation thus stands in the way of the appellant being registered as the shanbhog of the circle of which he is in charge.

5. For the above reasons the appeal is allowed and the relief asked for by the appellant granted.

No. R. 10083—*R. M.* 169-05-4, *dated Bangalore, 25th January* 1906.

Copy of the above is forwarded to the Deputy Commissioner of the Hassan District, together with the records received with his letter No. 434—S., dated the 23rd October 1905.

Appeal No. 46 *of* 1905-06.

Appellant	*Versus*	*Respondent*
Venkataramanaiya		Krishnappa.

Subject.

Claim to the shanbhogi office of Hebbari and other villages in the Chintamani Taluk.

The facts of the case appear sufficiently from the following :—

Decision.

This is an appeal from an order of the Deputy Commissioner declining to recognize the appellant's claim to the office of shanbhog of Hebbari and certain other villages in the Chintamani Taluk. The appellant is the son of one Venkatachellaiya who was removed from the office in 1891 on a charge of embezzlement. Considering the enormity of the offence the order of dismissal contained a direction that the family should for ever be debarred from holding the office and that a competent person unconnected with it should be appointed to succeed. In persuance of that order, the respondent was first appointed on probation and then confirmed.